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E-filing

Attorneys for Defendant
 COLORADO BANKERS LIFE INSURANCE
 COMPANY

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

ORIGINAL
 FILED
 MAY 21 2008
 RICHARD W. WIEKING
 CLERK U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 EMC

LESLIE HUMPHREY,

Plaintiff,

vs.

COLORADO BANKERS LIFE
 INSURANCE COMPANY, and DOES
 1 through 50, inclusive,
 Defendant.

Case No.

NOTICE OF REMOVAL OF ACTION
 TO UNITED STATES DISTRICT
 COURT

[San Francisco Superior Court Case No.
 CGC-08-473346]

Complaint Filed: March 14, 2008

TO THE DISTRICT COURT OF THE UNITED STATES, NORTHERN
 DISTRICT OF CALIFORNIA, AND TO PLAINTIFF AND HIS ATTORNEYS OF
 RECORD:

PLEASE TAKE NOTICE that on May 21, 2008, defendant COLORADO
 BANKERS LIFE INSURANCE COMPANY (hereinafter referred to as "CBL"),
 contemporaneously with the filing of this Notice, is effecting the removal of the
 above referenced civil action, Case No. CGC-08-473346, from the Superior Court of
 the State of California, for the County of San Francisco, to the United States District
 Court, for the Northern District of California, based upon diversity jurisdiction
 pursuant to 28 U.S.C. Sections 1332, 1441(b) and 1446, in that the suit has been
 brought between citizens of different states and the amount in controversy exceeds

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Attorneys for Defendant
COLORADO BANKERS LIFE INSURANCE
COMPANY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LESLIE HUMPHREY,

Plaintiff,

vs.

COLORADO BANKERS LIFE
INSURANCE COMPANY, and DOES
1 through 50, inclusive,

Defendant.

Case No.

NOTICE OF REMOVAL OF ACTION
TO UNITED STATES DISTRICT
COURT

[San Francisco Superior Court Case No.
CGC-08-473346]

Complaint Filed: March 14, 2008

TO THE DISTRICT COURT OF THE UNITED STATES, NORTHERN
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RECORD:

PLEASE TAKE NOTICE that on May 21, 2008, defendant COLORADO
BANKERS LIFE INSURANCE COMPANY (hereinafter referred to as "CBL"),
contemporaneously with the filing of this Notice, is effecting the removal of the
above referenced civil action, Case No. CGC-08-473346, from the Superior Court of
the State of California, for the County of San Francisco, to the United States District
Court, for the Northern District of California, based upon diversity jurisdiction
pursuant to 28 U.S.C. Sections 1332, 1441(b) and 1446, in that the suit has been
brought between citizens of different states and the amount in controversy exceeds

1 the sum of \$75,000, exclusive of costs and interest. The suit is one of a civil nature
2 over which the United States District Court has original jurisdiction.

3 The removal is based on the following grounds:
4

5 **I. TIMELINESS.**

6 1. On or about March 14, 2008, plaintiff LESLIE HUMPHREY
7 (hereinafter "Plaintiff") commenced this action by filing a Complaint in the Superior
8 Court of the State of California for the County of San Francisco, entitled Leslie
9 Humphrey v. Colorado Bankers Life Insurance Company, et al., designated Case
10 No. CGC-08-473346.

11 2. CBL first received a copy of the Summons and Complaint on April 22,
12 2008. True and correct copies of the Summons and Complaint served upon CBL are
13 attached hereto and incorporated herein as Exhibit "A." No prior pleading or paper
14 has been received by or served on CBL.

15 3. The Removal is therefore timely under 28 U.S.C. Section 1446(b) in
16 that CBL has filed this Notice of Removal of Action within one (1) year of
17 commencement of this action and within thirty (30) days of having first received the
18 Summons and Complaint.
19

20 **II. JOINDER.**

21 4. There are no defendants that are required to join in this removal. All
22 remaining defendants are fictitiously named and need not be considered for
23 purposes of removal. 28 U.S.C. § 1441(a).
24

25 **III. JURISDICTION.**

26 5. This action has been removed to this Court based upon diversity
27 jurisdiction pursuant to 28 U.S.C. Sections 1332(a)(1), 1332(c)(1) 1441, and 1446 in
28 that the suit has been brought between citizens of different states and the amount in

1 controversy exceeds the sum of \$75,000, exclusive of costs and interest, as set forth
 2 more fully below. The suit is one of a civil nature over which the United States
 3 District Court has original jurisdiction.

4
 5 **A. Citizenship of CBL.**

6 6. Defendant CBL is a corporation incorporated in the State of Colorado,
 7 with its principal place of business in the State of Colorado.

8
 9 **B. Citizenship of Plaintiff.**

10 7. CBL is informed and believes, and on that basis alleges, that Plaintiff
 11 was, at the time of commencement of this action, and is now, a resident and citizen
 12 of the State of California.

13
 14 **C. Amount in Controversy.**

15 8. Plaintiff seeks recovery of benefits allegedly due to him as an insured
 16 under the terms and conditions of a life insurance policy (hereinafter "Policy"),
 17 issued to Plaintiff. [Complaint, ¶¶ 1-2, 10-13 and Prayer].

18 9. Plaintiff has alleged in his Complaint that pursuant to the Policy, he is
 19 entitled to **\$82,500** in benefits, exclusive of interest or costs. [Complaint, ¶¶ 10, 15].

20 10. Additionally, by filing this unlimited civil action in the Superior Court,
 21 Plaintiff is attesting that the amount in controversy at least meets the jurisdictional
 22 limit of the Superior Court, or **\$50,000**.

23 11. The foregoing sum is also exclusive of the general, emotional distress
 24 and attorneys' fees damages that Plaintiff seeks through his Complaint. [Complaint,
 25 ¶¶ 19, 25, 31 and Prayer]; See Galt G/S v. JSS Scandinavia, 142 F. 3d 1150 (9th Cir.
 26 1998) (holding that attorneys' fees that plaintiffs can recover as a matter of law must
 27 be considered by the Court in calculating the amount in controversy). Plaintiff can
 28 also seek and potentially recover attorneys' fees under state law, pursuant to Brandt

1 v. Superior Court (Standard Ins.), (1985) 37 Cal. 3d 813, 817, 210 Cal. Rptr. 211,
 2 213 (a plaintiff can potentially recover attorneys' fees as a measure of damages
 3 under a breach of the implied covenant of good faith and fair dealing, and attorneys'
 4 fees must also be considered by the Court in assessing the amount in controversy of
 5 the action). Thus, these amounts must also be considered in calculating the amount
 6 in controversy.

7 12. Furthermore, in calculating the amount in controversy, the Court must
 8 also consider exemplary and punitive damages that Plaintiff can recover as a matter
 9 of law. See Surber v. Reliance Nat'l Indem. Co., (N.D. Cal. 2000) 110 F. Supp. 2d
 10 1227, 1232, citing Richmond v. Allstate Ins. Co., (S.D. Cal. 1995) 897 F. Supp. 447,
 11 450. In his Complaint, Plaintiff has included claims for "Breach of the Implied
 12 Covenant of Good Faith and Fair Dealing" and "Fraud." [Complaint, pp. 4-7].
 13 Under state law, Plaintiff can therefore seek and potentially recover punitive and/or
 14 exemplary damages. See Silberg v. California Life Ins. Co., (1974) 11 Cal. 3d 452,
 15 462; Neal v. Farmers Ins. Exch., (1978) 21 Cal. 3d 910, 922-23, 148 Cal. Rptr. 289,
 16 395-96. Moreover, Plaintiff specifically seeks punitive damages through his
 17 Complaint. [Complaint, ¶¶ 26, 32 and Prayer].

18 13. In light of the fact that Plaintiff alleges in his Complaint that he is
 19 entitled to \$82,500 in benefits pursuant to the Policy, general damages for
 20 emotional distress, punitive and/or exemplary damages, other incidental
 21 damages, and attorneys' fees, the amount in controversy in this case, exclusive of
 22 interest and costs, clearly exceeds the jurisdictional requirement of this Court.

23

24 IV. PROCESS.

25 14. True and correct copies of all process, pleadings, and orders, other than
 26 the Complaint and Summons, are attached hereto as Exhibit "B." CBL has received
 27 no other process, pleadings or orders.

28

1 15. On May 16, 2008, CBL filed an Answer to Plaintiff's Complaint in the
2 Superior Court of the State of California, for the County of San Francisco. A true
3 and correct copy of the Answer is attached hereto and incorporated herein as Exhibit
4 "C."

5 16. On May 21, 2008, a copy of this Notice was filed with the Clerk of the
6 Superior Court of the State of California, for the County of San Francisco.

7 WHEREFORE, CBL prays that the above action pending in the Superior
8 Court for the County of San Francisco be removed from that court to this Court.

9
10 Dated: May 21, 2008

MESERVE, MUMPER & HUGHES LLP
LINDA M. LAWSON
KHRYS WU

11
12 By: 

13 Khrys Wu
14 Attorneys for Defendant
15 COLORADO BANKERS LIFE
16 INSURANCE COMPANY
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(FAX) 1+510+873+0984PAGE 82
P. 003/031**SUMMONS**
(CITACION JUDICIAL)NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):COLORADO BANKERS LIFE INSURANCE COMPANY, and DOES
through 50, inclusiveYOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
LESLIE HUMPHREY

SUM-100

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que pague su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos en línea de la corte en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):
SAN FRANCISCO COUNTY SUPERIOR COURT
400 McAllister Street
San Francisco, CA 94102

Case Number: **08-38-073346**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Gordon Park-LiDATE:
(Fecha) **MAR 14 2008**Served by: **Gordon Park-Li**, Deputy
(Servido por) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify): **Colorado Bankers Life Insurance Company**
under: ☒ CCP 416.10 (corporation) ☐ CCP 416.50 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
4. ☐ by personal delivery on (date):

Form Adopted for Mandatory Use
Judicial Council of California
JWS-101 (Rev. January 7, 2004)

SUMMONS

Page 1 of 7
Code of Civil Procedure §§ 412.25, 495
Approved by the Judicial Council of California

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PAGE 03

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P. 004/031

RECEIVED
FILED
SAN FRANCISCO COUNTY
SUPERIOR COURT

2008 MAR 14 AM 1:08

TODD J. BROWN, CLERK

1 E. Gerard MANNION (State Bar #77257)
2 Wesley M. Lowe (State Bar #111761)
3 MANNION & LOWE
4 655 Montgomery Street, Suite 1200
5 San Francisco, California 94111
6 Telephone: (415) 733-1050
7 Fax: (415) 434-4810

CASE MANAGEMENT CONFERENCE SET:

at:

JUDGE J. J. J.

8 Attorneys for Plaintiff
9 LESLIE HUMPHREY

AUG 15 2008 - 9:00 AM

DEPARTMENT 212

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

UNLIMITED JURISDICTION

LESLIE HUMPHREY,

Case No. **SEC-38-473346**

Plaintiff,

vs.

COMPLAINT FOR BREACH OF
CONTRACT, BREACH OF IMPLIED
COVENANT OF GOOD FAITH AND
FAIR DEALING, AND FRAUD

15 COLORADO BANKERS LIFE
16 INSURANCE COMPANY, and DOES 1
17 through 50, inclusive,

DEMAND FOR TRIAL BY JURY

Defendants.

Plaintiff alleges:

GENERAL ALLEGATIONS

21 1. Plaintiff Leslie Humphrey is the insured under a written policy of life insurance issued by,
22 through and/or on behalf of defendant Colorado Bankers Life Insurance Company. The policy of life
23 insurance contains a Critical Condition Accelerated Benefit Rider which is made a part of the
24 insurance policy.

25 2. Plaintiff and defendant Colorado Bankers Life Insurance Company entered into the policy
26 of life insurance in San Francisco, California on or about November 27, 1998.

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Complaint and Demand for Trial by Jury

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PAGE 04
P.005/031

3. Plaintiff is informed and believes and thereupon alleges that at all times relevant that defendants Colorado Bankers Life Insurance Company and Docs 1 - 25, were and are corporations, businesses or other entities engaged in the business of insurance and authorized to transact business in the State of California. Plaintiff is informed and believes and thereon alleges that defendants Colorado Bankers Life Insurance Company and Docs 1 - 25 are part of a single enterprise and/or joint venture and/or conglomerate that combine their resources and functions to carry out a single business enterprise for profit.

4. Defendants Colorado Bankers Life Insurance Company and Docs 1 - 25 are corporations, businesses, or other entities engaged in the business of insurance, including but not limited to: underwriting insurance policies, issuing policies, establishing standards, practices, and procedures affecting the business of insurance, handling claims, managing insurance companies and/or insurance holding companies, and, providing insurance coverage.

5. Each of the defendants, Colorado Bankers Life Insurance Company and Docs 1 - 25, was authorized, controlled, and/or directed by the other defendants with regard to these insurance related functions.

6. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as Docs 1 - 50, inclusive, and therefore sues said defendants by such fictitious names. Plaintiff will amend this complaint to allege the true names and capacities of defendants sued herein as Docs 1 - 50, inclusive, when the same are ascertained. Plaintiff is informed and believes and thereon alleges that the fictitiously named defendants are legally responsible for the matters alleged and set forth herein. Plaintiff further alleges that defendants' actions and/or inactions legally caused or contributed to plaintiff's injuries and damages as alleged herein.

7. The use of the term "defendants" at any place in this complaint is intended to include all named defendants, and all defendants designated as Docs 1 - 50, inclusive, unless the context of the sentence or particular cause of action indicates otherwise.

8. Each of the defendants was acting as the agent, servant, associate, employee, co-

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Complaint and Demand for Trial by Jury

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PAGE 05

APR-21-2008(MON) 16:03 ONE LEGAL

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P.006/031

1 conspirator, or joint venturer of each of the other defendants and each of the defendants authorized,
2 ratified, approved, directed, consented to, or encouraged all of the acts of each of the other
3 defendants.

4 9. Each corporate defendant was a subsidiary, parent, or alter ego of the other defendants and
5 was sufficiently involved in the management of the other defendants so that it was responsible for
6 the acts of the other defendants and each corporate defendant controlled the other defendants.

7 10. Plaintiff is insured under a written policy of insurance, the relevant portions of which is
8 attached as Exhibit 1, and incorporated herein by reference. The policy provides a benefit in the face
9 amount of \$82,500.

10 11. In or around May 2007, plaintiff was diagnosed with liver cancer.

11 12. Thereafter, plaintiff made a claim for the benefits under the Critical Condition
12 Accelerated Benefit Rider by providing due proof to defendant Colorado Bankers Life Insurance
13 Company.

14 13. On or about January 17, 2008, defendant Colorado Bankers Life Insurance Company
15 informed plaintiff that his claim was denied and would not be honored.

16 FIRST CAUSE OF ACTION FOR BREACH OF CONTRACT

17 14. Plaintiff incorporates by reference all of the General Allegations. Plaintiff brings this
18 cause of action against defendants Colorado Bankers Life Insurance Company and Does 1-5.

19 15. These defendants, by their duly authorized employees, representatives, and/or agents,
20 executed and delivered to plaintiff a written policy of insurance, the relevant portion of which is
21 attached as Exhibit 1. The essential terms of the policy provided that the defendants would pay
22 100% of the face amount of the policy upon due proof that plaintiff has been diagnosed with a
23 Critical Condition. Plaintiff has been diagnosed with liver cancer which qualifies as a Critical
24 Condition under the terms of the policy.

25 16. All premiums due under the policy were paid. At all times relevant, plaintiff complied
26 with all necessary terms and conditions of the policy.

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PAGE 06

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P. 007/031

17. Defendants breached the policy by failing to pay the amount of insurance due under the policy and by failing to abide by the implied covenant of good faith and fair dealing.

18. Defendants are estopped and/or are barred by law and the terms of the policy from denying coverage under the policy and/or have waived the right to deny coverage under the policy because of their conduct, including accepting premium payments after learning of plaintiff's past medical conditions and medical history.

19. As a direct and proximate consequence of defendants' breach of contract, plaintiff suffered damages including, but not limited to, loss of policy benefits, interest, and other compensatory damages.

WHEREFORE, plaintiff prays for judgment as set forth below.

**SECOND CAUSE OF ACTION FOR BREACH OF THE IMPLIED
COVENANT OF GOOD FAITH AND FAIR DEALING**

20. Plaintiff incorporates by reference all of the preceding allegations as though fully set forth herein. Plaintiff brings this cause of action against defendants Colorado Bankers Life Insurance Company and Docs 1-5.

21. At all times relevant to the allegations in this complaint, the defendants owed plaintiff a duty of good faith and fair dealing with respect to the payment of insurance benefits and covenanted that they would do nothing to impair plaintiff's rights to receive the benefits owed under the insurance policy.

22. At all times relevant to the allegations in this complaint, the defendants violated the covenant of good faith and fair dealing by the following:

- A. Unreasonably failing to investigate or evaluate plaintiff's claim fairly or in good faith;
- B. Failing to promptly investigate plaintiff's claim;
- C. Unreasonably failing to thoroughly and fairly investigate all information reasonably available to them and/or ignoring relevant information so that they could ignore their obligation to honor plaintiff's claim;

Complaint and Demand for Trial by Jury

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PAGE 07
 008/031

- 1 D. Unreasonably failing to investigate all bases upon which to pay and honor
- 2 plaintiff's claim for benefits and unreasonably failing to investigate all bases to support coverage;
- 3 E. Unreasonably refusing and continuing to refuse to pay plaintiff benefits properly
- 4 payable under policy of insurance and to deprive plaintiff of his rightful benefits with the knowledge
- 5 that said refusals and denials were and are wrongful and contrary to their obligations under the law;
- 6 F. Unreasonably failing and refusing to give plaintiff's interest at least as much
- 7 consideration as they gave their own and placing their interests ahead of the interest of plaintiff;
- 8 G. Unreasonably failing to adopt and implement reasonable or proper standards
- 9 applicable to the prompt and fair investigation and processing of plaintiff's claim;
- 10 H. Unreasonably failing to attempt in good faith to effectuate a prompt, fair, and
- 11 equitable settlement of plaintiff's claim even though liability therefore was and is reasonably clear;
- 12 I. Refusing to pay plaintiff's claim with the knowledge that plaintiff's claim is
- 13 payable and with the intent of saving money at plaintiff's expense;
- 14 J. Consciously adopting strained and unreasonable coverage positions and/or
- 15 analyses in order to come up with plausible sounding but wrongful and erroneous justifications for
- 16 denying plaintiff's claim;
- 17 K. Unreasonably refusing or failing to follow the standards imposed by the law, the
- 18 California Insurance Code and/or the regulations promulgated by the California Department of
- 19 Insurance;
- 20 L. Misrepresenting the terms and effect of provisions of the insurance policy in an
- 21 attempt to deceive plaintiff in order to prevent him from recovering the benefits due him under the
- 22 insurance policy; and
- 23 M. Attempting to deny the claim based on grounds that they knew or should have
- 24 known that they are estopped from raising and/or barred by law and the terms of the policy from
- 25 asserting or relying upon as a basis for denial or which they have waived any right to assert as a basis
- 26 for denial.

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Complaint and Demand for Trial by Jury

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P. 009/031

1 Plaintiff believes that there may be additional acts or omissions constituting a breach of the
2 implied covenant of good faith and fair dealing, and will present the same, either in discovery or at
3 the trial of this action.

4 23. Defendants refused to honor their obligations under the policy of insurance and took the
5 actions alleged in the previous enumerated paragraph in order to retaliate against plaintiff and/or in
6 order to hold onto the money which they would have had to spend in providing the benefits to
7 plaintiff so that they could earn interest or return on investment on that money for their own benefit,
8 even though they knew they were obligated to spend it on plaintiff's behalf. In doing the acts alleged
9 above, defendants knowingly and consciously ignored plaintiff's rights, and their obligations to
10 plaintiff and did these acts intentionally and/or as part of a business practice designed to unfairly
11 maximize defendants' profits at the expense of plaintiff.

12 24. Plaintiff is further informed and believes and thereon alleges that the defendants decided
13 to use their economic power and might to oppress plaintiff and subject him to cruel and unjust
14 hardships in conscious disregard of his rights. In addition, the defendants have refused the payment
15 of policy benefits at a time they knew, or should have known, that plaintiff needed the money and
16 would suffer hardship if he did not receive prompt payment. The defendants knew that litigation is
17 an expensive process and expected that plaintiff would not have the wherewithal, ability, and/or
18 strength to bring suit and force defendants to pay the money to which plaintiff is owed. The
19 defendants stonewalled and/or misrepresented the applicable policy provisions in the hope and/or
20 expectation that plaintiff would be unable and/or unwilling to file suit. By doing so, the defendants
21 would be able to retain the money which they knew was owed to plaintiff and use the money for their
22 own benefit, including earning interest or investment income on it. In taking these positions,
23 defendants acted maliciously, oppressively and fraudulently towards plaintiff.

24 25. As a direct and proximate result of the acts of defendants, plaintiff suffered damages,
25 including but not limited to, the loss of contract benefits, loss of interest, emotional distress, loss of
26 time, attorneys' fees and costs, and other consequential damages in a sum to be proven at the trial of

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PAGE 25
 P. 010/031

1 this action.

2 26. In doing the acts set forth above, defendants acted maliciously, oppressively,
 3 fraudulently, and in knowing and conscious disregard of plaintiff's rights, thereby justifying an
 4 award of punitive damages in a sum to be determined by judge or jury.

5 WHEREFORE, plaintiff prays for judgment as set forth below.

6 THIRD CAUSE OF ACTION FOR FRAUD

7 27. Plaintiff incorporates by reference all of the preceding allegations as though fully set
 8 forth herein. This cause of action is brought against defendants Colorado Bankers Life Insurance
 9 Company and Docs 1-5.

10 28. These defendants, by and through their employees and agents, represented and promised
 11 that the written policy of life insurance would provide coverage for certain critical conditions and
 12 that this coverage would take effect and policy benefits would be provided at the moment he
 13 submitted the proof of the occurrence of one of the specified critical conditions.

14 29. The representations and promises made by the defendants were false, and at the time
 15 defendants made them, they knew that their representations and promises were false and that they did
 16 not intend to perform as promised. Alternatively, the representations and promises were made
 17 recklessly and without regard for the truth.

18 30. These defendants made the representations and promises with the intent to have plaintiff
 19 rely on them. Plaintiff reasonably relied on the representations and promises to his detriment by
 20 making premium payments and otherwise.

21 31. As a direct and proximate result of the acts of defendants, plaintiff suffered damages,
 22 including but not limited to, the loss of contract benefits, loss of interest, emotional distress, loss of
 23 time, attorneys' fees and costs, and other consequential damages in a sum to be proven at the trial of
 24 this action.

25 32. In doing the acts set forth above, defendants acted maliciously, oppressively,
 26 fraudulently, and in knowing and conscious disregard of plaintiff's rights, thereby justifying an

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PAGE 10
 P. 011/031

1 award of punitive damages in a sum to be determined by judge or jury.

2 WHEREFORE, plaintiff prays for judgment as set forth below:

- 3 1. For special damages according to proof;
- 4 2. For general and consequential damages according to proof;
- 5 3. For attorneys' fees and litigation expenses according to proof;
- 6 4. For punitive damages against the defendants in a sum to be determined by judge or
- 7 jury;
- 8 5. For interest on all damages including interest under Civil Code §§3287 and 3288;
- 9 6. For costs of suit herein incurred;
- 10 7. For such other and further relief as the Court may deem proper.

11 Dated: March 14, 2008

MANNION & LOWE
 A Professional Corporation

12
 13 By: Wesley M. Lowe
 14 Wesley M. Lowe
 15 Attorney for Plaintiff
 LESLIE HUMPHREY

16 DEMAND FOR TRIAL BY JURY

17 Plaintiff hereby demands trial by jury.

18 Dated: March 14, 2008

MANNION & LOWE
 A Professional Corporation

19
 20 By: Wesley M. Lowe
 21 Wesley M. Lowe
 22 Attorney for Plaintiff
 LESLIE HUMPHREY

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 (FAX) 1+510+873+0984

PAGE 11
 P. 012/031

1 E. Gerard Mannion (State Bar #77287)
 2 Wesley M. Lowe (State Bar # 111761)
 3 MANNION & LOWE
 4 655 Montgomery Street, Suite 1200
 5 San Francisco, California 94111
 6 Telephone: (415) 733-1050
 7 Fax: (415) 434-4810
 8 Attorneys for Plaintiff
 9 LESLIE HUMPHREY

ENDORSED
 FILED
 San Francisco County Superior Court

APR 17 2008

GORDON PARK-LI, Clerk
 By: Deputy Clerk

10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
 11 IN AND FOR THE COUNTY OF SAN FRANCISCO
 12 UNLIMITED JURISDICTION

13 LESLIE HUMPHREY,
 14 Plaintiff,

15 COLORADO BANKERS LIFE
 16 INSURANCE COMPANY, and DOES 1
 17 through 50, inclusive,
 18 Defendants.

Case No. CGC-08-473346

ERRATA

EXHIBIT 1 TO THE COMPLAINT FOR
 BREACH OF CONTRACT, BREACH OF
 IMPLIED COVENANT OF GOOD
 FAITH AND FAIR DEALING, AND
 FRAUD

19 Plaintiff inadvertently omitted attaching Exhibit 1 to the Complaint and therefore now
 20 attaches Exhibit 1.

21 Dated: April 17, 2008

MANNION & LOWE
 A Professional Corporation

22 By: Wesley M. Lowe
 23 Wesley M. Lowe
 24 Attorney for Plaintiff
 25 LESLIE HUMPHREY
 26
 27
 28

ERRATA - EXHIBIT 1 TO COMPLAINT

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PAGE 12
 P. 113/131

COLORADO BANKERS LIFE INSURANCE COMPANY

5990 Greenwood Plaza Boulevard
 Englewood, Colorado 80111

Colorado Bankers Life Insurance Company is the Company writing this policy. 'We', 'us' or 'our' refers to the Company. 'You' or 'your' refers to the Owner of this policy. We will pay the Face Amount of this policy, subject to its provisions, if the Insured's death occurs while this policy is in full force during the original term period designated in this policy or during any renewal term period. Payment will be made to your Beneficiary upon receipt at our Home Office of due proof of the Insured's death.

This policy is issued in consideration of the application for it and the payment of the premiums.

The Policy Specifications page and the conditions and provisions on this and the following pages are part of the policy.

NOTICE OF THIRTY DAY RIGHT TO EXAMINE POLICY

This Policy may be returned for any reason, up to 30 days after it is received, and a full refund of any premiums paid will be given. This Policy should be mailed or delivered to us or to the insurance agent through whom it was obtained. When so returned, this Policy is void from its beginning.

Signed by the Company at Englewood, Colorado

Michael J. Stone

MICHAEL J. STONE, SECRETARY

Paul Andrews

PAUL ANDREWS, PRESIDENT

RENEWABLE AND CONVERTIBLE TERM LIFE POLICY

Renewable to age 70, convertible to age 65. Premiums payable during the lifetime of the Insured prior to age 70. Face amount payable at death of the Insured during term period.

THIS POLICY IS NON-PARTICIPATING

RCT-998

PAGE 1

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P. 014/021**POLICY SPECIFICATIONS****BASE POLICY**

Renewable and Convertible Term Life Policy (RCT-398)

RIDERS

Critical Condition Accelerated Benefit Rider (RCI-398)

Insured: LESLIE H HUMPHREY

POLICY NUMBER: 0702786

Social Security Number: 568-98-4768

Age: 42

Sex: Male

Premium Class: Nonsmoker

Face Amount: \$ 82,806

Policy Date: 12/15/1998

End of Initial Benefit Period: 12/14/2008

Beneficiary

As named in the application, subject to designations provided in the policy.

Schedule of Monthly Premiums

<u>Premium Due Dates</u>	<u>Term Policy</u>	<u>Critical Condition Rider</u>	<u>Total Premium</u>
12/15/1998-12/14/2008	\$ 39.68	\$ 20.33	\$ 60.01
12/15/2008-12/14/2018	\$ 103.13	\$ 46.82	\$ 149.95
12/15/2018-09/18/2026	\$ 204.76	\$ 75.35	\$ 280.11

Premiums may be paid annually, semi-annually, quarterly, or monthly. Premiums for the first 10-year period are:

Annual	\$ 600.00
Semi-Annual	\$ 300.00
Quarterly	\$ 150.00
Monthly	\$ 60.00

COLORADO BANKERS LIFE INSURANCE COMPANY

Englewood, Colorado

RCT-398

PAGE 3

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PAGE 14
P. 015/031

Incontestability

Statements made while applying for this policy are, in the absence of fraud, representations and not warranties. We cannot use any such statements to contest the validity of this policy or to deny a claim unless it is written in the initial application or in a supplemental application. We cannot contest the initial policy death benefit after it has been in force during the Insured's lifetime for two years from the Policy Date.

Any increase in the death benefit for this policy for which you submit an application will be incontestable after the increase has been in force during the Insured's lifetime for two years from the effective date of the increase. Any contest of this increase in death benefit will be based on the application for the increase.

If this policy is reinstated, the statements in the application for reinstatement will be incontestable after the policy has been in force during the Insured's lifetime for two years from the effective date of the reinstatement. Any contest of the reinstatement of this policy will be based on the application for reinstatement.

RCT-398

Page 5

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PAGE 16
P. 017/031

COLTADO BANKERS LIFE INSURANCE COMPANY

CRITICAL CONDITION ACCELERATED BENEFIT RIDER

Benefits paid under this Rider may be taxable. If so, you or your Beneficiary may incur a tax obligation. As with all tax matters, a personal tax advisor should be consulted to assess the impact of this benefit. Benefits of the Rider are not available if the Policy to which it is attached is not in force. Benefits payable under this Rider will reduce benefits payable under the Policy.

This Rider is made a part of the Policy to which it is attached. The terms of your Policy also apply to this Rider except as they are changed by the terms of this Rider.

Benefit Amount

The Benefit Amount payable under this Rider in the event of proof of the first occurrence of a Covered Condition will be:

- (1) 100% of the current Death Benefit of the Policy for Heart Attack, Stroke, Life-Threatening Cancer, Major Organ Transplant, Renal Failure, or Terminal Illness.
- (2) 25% of the current Death Benefit of the Policy for Major Heart Surgery or HIV Infection resulting from a Blood Transfusion. Major Heart Surgery is comprised of Coronary Bypass Surgery, Heart Valve Surgery, or Aorta Surgery. (The Major Heart Surgery and HIV benefit are only payable once.)
- (3) 10% of the current Death Benefit of the Policy for Angioplasty Surgery. (This benefit is only payable once.)
- (4) An Annual Benefit for Social Security Disability equal to 10% of the current Death Benefit of the Policy for five years, followed a year later by a final payment equal to the remaining Death Benefit of the Policy at that time. For this benefit, the current Death Benefit is calculated as of the date the first payment is made.

On the Eligibility Date, if the Insured qualifies under (1) above, the full Death Benefit will be paid to you and the Policy and this Rider will terminate with no further benefits payable under the Policy or this Rider.

On the Eligibility Date, if the Insured qualifies under (2) above, and a 25% benefit is paid, the Death Benefit of the Policy will be reduced to 75% of its amount prior to the Eligibility Date, based on the amount of benefit paid.

On the Eligibility Date, if the Insured qualifies under (3) above, and a 10% benefit is paid, the Death Benefit of the Policy will be reduced to 90% of its amount prior to the Eligibility Date, based on the amount of benefit paid.

At any time a benefit is paid for Social Security Disability, the Death Benefit of the Policy will be reduced by the amount of the disability benefit paid.

Any return of premium payable under the Policy due to suicide within 2 years from the date of issue of this Rider, will be reduced by any previously paid Benefit Amount.

When a partial benefit is paid as described in (2), (3) or (4) above, as of the Eligibility Date, the Face Amount of the Policy will be reduced by the amount of benefit paid. Any partial payments will also reduce any future benefits available under the Policy and this Rider, and the premium will be reduced to reflect the reduction. The premium reduction will not be pro-rata because the Policy premium includes a policy fee which does not vary with the Face Amount and which will not be reduced.

Entitlement to Benefit

The Benefit Amount will be payable to you upon the proof of the occurrence of any one of the Covered Conditions defined below. The condition must first manifest itself on or after the 30th day following the Rider Effective Date, except that for Life-Threatening Cancer the condition must first manifest itself at least 60 days after the Rider Effective Date. The Policy and this Rider must be in force at the time of the occurrence.

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PAGE 17
 P. 018/031

Eligibility for Benefit

This benefit will be payable to you upon the proof of the occurrence of any one of the Covered Conditions defined below, while this Rider and the Policy are in force. A partial benefit paid under this Rider (as in (2) and (3) "Benefit Amount", above) is payable only once regardless of the subsequent occurrence of the same or a similar condition. A similar condition includes any condition mentioned within the same category under a Covered Condition.

Eligibility is also subject to the following additional conditions:

- (1) The Policy must not be assigned;
- (2) If you have named an irrevocable Beneficiary, that Beneficiary must consent in writing in order for you to receive a Benefit Amount; and
- (3) If the Policy is "Community Property", you will need your spouse's written consent in order to receive a Benefit Amount.

Eligibility Date

Provided that the date is at least thirty (30) days after the Rider Effective Date, or at least sixty (60) days after the Rider Effective Date for Life-Threatening Cancer, the Eligibility Date for a Covered Condition will be:

- (1) For Heart Attack or Stroke, the date of diagnosis as defined below;
- (2) For Life-Threatening Cancer, the date of diagnosis;
- (3) For Major Organ Transplant, the date of transplant surgery;
- (4) For Renal Failure, the earlier of the date regular dialysis begins or the date renal transplantation takes place;
- (5) For Terminal Illness, the date of diagnosis;
- (6) For Major Heart Surgery or Angioplasty, the date surgery takes place;
- (7) For HIV Infection resulting from a Blood Transfusion, the date of the first positive HIV test;
- (8) For Social Security Disability, the date of the first disability payment as designated by the Social Security Administration.

Covered Conditions

The following conditions are Covered Conditions. If a condition is not listed in this subsection it is not covered under this Rider.

- (1) We will pay 100% of the current Death Benefit of the Policy for the following Covered Conditions:
 - (a) **Heart Attack** Death of a person of the heart muscle (myocardium) resulting from a blockage of one or more coronary arteries.

Diagnosis of a Heart Attack requires all three of the following criteria:

- i. clinical picture of myocardial infarction;
- ii. new electrocardiographic (EKG) findings consistent with myocardial infarction; and
- iii. elevation of cardiac enzymes above standard laboratory levels of normal (in case of creatine phosphokinase (CPK), a CPK-MB measurement must be used).

CCR-398

Page 3

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PAGE 18
 P. 019/031

- (b) Stroke: Any acute cerebral vascular accident producing neurological impairment and resulting in paralysis or other measurable objective neurological deficit persisting for at least thirty (30) days. After a neurological deficit has persisted for at least thirty (30) days, the Eligibility Date will be the initial date of loss. This definition of stroke will specifically exclude Transient Ischemic Attacks and attacks of Vertebrobasilar Ischemia.

Diagnosis of a Stroke must be evidenced by a clinical picture of permanent neurological damage provided from a Computed Axial Tomograph (CAT scan) or a Magnetic Resonance Image (MRI).

- (c) Life-Threatening Cancer: The manifestation of a malignant tumor (a tumor which is not encapsulated and has properties to infiltrate and cause metastasis) including leukemia and Hodgkin's Disease (except Stage I of Hodgkin's Disease.) The disease must be supported by histological evidence of malignancy.

Specifically excluded from coverage are the following:

- i. pre-malignant tumors or polyps;
- ii. cancer in situ, intraductal non-invasive carcinoma of the breast, carcinoma of the appendix, Stage I transitional carcinoma of the urinary bladder;
- iii. any skin cancers other than melanomas; or
- iv. Stage I Hodgkin's disease.

- (d) Major Organ Transplant: The actual undergoing of transplantation of heart, lung, liver or bone marrow, but not as the donor.

- (e) Renal Failure: End stage renal failure presenting as chronic irreversible failure of both kidneys to function, as a result of which regular renal dialysis is instituted or renal transplantation is carried out.

- (f) Terminal Illness: Advanced or rapidly progressing incurable disabling terminal illness where, based on our investigation, the life expectancy is no greater than twelve months.

- (2) We will pay 25% of the current Death Benefit of the Policy for the following Covered Conditions. The Major Heart Surgery benefit is only payable once regardless of the subsequent occurrence of the same condition or another condition under Major Heart Surgery. The HIV benefit is only payable once.

(a) Major Heart Surgery

- i. Coronary By-Pass Surgery: The actual undergoing of coronary by-pass surgery (either saphenous vein or internal mammary graft) following an unequivocal recommendation by a consultant cardiologist for the treatment of coronary disease.
- ii. Heart Valve Replacement: The actual undergoing of the total replacement of one or more heart valves for the treatment of disease. Heart valve repair and valvotomy are specifically excluded.
- iii. Aorta Surgery: The actual undergoing of surgery for disease of the aorta needing excision and surgical replacement of the diseased aorta with a graft. For the purposes of this definition, aorta means the thoracic and abdominal aorta but not its branches.

Traumatic injury of the aorta is excluded.

Any claim for benefit for Major Heart Surgery must include all of the following:

- i. A report from a consultant cardiologist, to include evidence of prior treatment using appropriate medication,
- ii. Evidence of significant electrocardiogram (EKG) changes,
- iii. Angiographic evidence of the underlying disease,
- iv. An unequivocal recommendation for the procedure from a consultant cardiologist.

The company reserves the right to withhold payment pending the satisfactory evidence that the procedures have been carried out.

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PAGE 19
 P. 020/031

- (b) Human Immunodeficient Virus (HIV) Infection Resulting from a Blood Transfusion: Infection by any HIV will be treated as a Covered Condition only if we are satisfied that the infection was caused by a medically necessary blood transfusion performed in the United States after the Policy Date.

Diagnosis of HIV infection requires all of the following:

- i. A negative HIV blood test within seventy-two (72) hours of the blood transfusion;
- ii. A positive HIV test within six (6) months after the transfusion;
- iii. The institution which provided the transfusion admits liability;
- iv. The Insured is not the only person so infected; and
- v. The Insured is not a hemophiliac.

- (3) We will pay 10% of the current Death Benefit of the Policy for the following Covered Condition. This benefit is only payable once regardless of the subsequent occurrence of the same condition.

- (a) Angioplasty: The actual undergoing of angioplasty, arthroscopy or laser treatment for coronary artery disease, which cannot be adequately controlled by medical therapy, following an unequivocal recommendation by a consultant cardiologist.

Angiographic evidence of the underlying disease must be provided.

- (4) We will pay an Annual Benefit for Social Security Disability. The Annual Benefit is 10% of the current Death Benefit of the Policy as of the date the first payment is made for this benefit. We will pay the Annual Benefit for five years, followed a year later by a final payment equal to the remaining Death Benefit of the Policy at that time. All payments after the first payment are payable on the anniversaries of the Eligibility Date. Payments will only be made if the Insured continues to qualify under the Social Security Disability Covered Condition.

Whenever a payment is made under this Covered Condition, the Face Amount of the Policy will be reduced by the amount of that payment. However, in no event will we pay more under the Policy than the Face Amount of the Policy as of the first occurrence of a Covered Condition.

- (a) Social Security Disability: The receipt by the Insured, prior to age 65, of Social Security Disability payments under this Rider will require you to submit to us satisfactory evidence of receipt of Social Security Disability payments from the Social Security Administration.

Requirements of Diagnosis

For proof of occurrence, we must be furnished a diagnosis of a Covered Condition by a physician, other than the Insured or a member of the Insured's family, licensed to practice medicine in the United States, including documentation supported by clinical, radiological, histological and laboratory evidence of the Covered Condition. The proof of occurrence must be satisfactory to us and we may require, at our expense, an examination or further tests by a physician of our choice.

Limitations and Exclusions

- (1) No benefit will be payable for a Covered Condition if a claim results from any of the following:

- (a) the misuse of alcohol or taking of drugs (other than under the direction of a registered medical practitioner other than the Insured or a member of the Insured's immediate family);
- (b) suicide (prior to the second Policy anniversary) or injuries intentionally self-inflicted, whether sane or insane;
- (c) injury received during active participation in a riot, strike or civil commotion, insurrection, war or invasion, or any act incidental thereto;
- (d) the Insured's participating or attempting to participate in any illegal activity.

- (2) No benefits will be payable for cancer which is not life-threatening.

CCR-398

Page 5

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PAGE 20
P. 021/031

Notice of Claim

We must be given written notice of claim within thirty (30) days after the Eligibility Date or as soon as reasonably possible. Notice given to the Home Office which is sufficient to identify the Insured is deemed sufficient notice. When we receive the notice of claim, we will send forms for filing Proof of Loss. If we do not furnish these forms within fifteen (15) days of the notice, the person making the claim will have fulfilled the requirements of this Rider for the filing of such proof upon sending us written proof of the Covered Condition, the Insured, and the extent of the loss. This must be done within the time shown in the Rider for filing Proof of Loss.

Proof of Loss

Written Proof of Loss must be given to us within ninety (90) days after the Eligibility Date. Failure to furnish written Proof of Loss within that time will not reduce or void a claim if it was not reasonably possible to give proof within that time; however, written Proof of Loss may not be furnished later than one year from the time the proof is required, except in cases of legal incapacity.

Payment of Claim

Upon the proper receipt of written Proof of Loss, we will, within thirty (30) working days, pay benefits or mail you a notice stating the reasons payment was not made in whole or in part or give you a written itemization of information or documents needed to process your claim for benefits. The Policy and this Rider must be in force at the time of the Covered Condition before a benefit is paid. Benefits will be paid to you, or in the event of death, to the named Beneficiary.

Termination

This Rider will terminate on the earliest of:

- (1) The premium due date that falls on or next follows the date that a written request for cancellation of this Rider is received by us;
- (2) The maturity or termination of the Policy;
- (3) The death of the Insured;
- (4) The date on which a sum equal to 100% of the Death Benefit under the Policy has been paid out. In no case will the total benefit paid under the Policy and this Rider exceed 100% of the Face Amount of the Policy.

Reinstatement

The provisions in the Policy regarding reinstatement apply to this Rider. In addition, the waiting period detailed under "Entitlement to Benefit" will apply from the date of reinstatement.

Rider Effective Date

The Rider Effective Date is the Policy Date unless changed by endorsement.

Signed for us at Englewood, Colorado


Secretary


President

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Page 6

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PAGE 21
P. 022/031

CASE NUMBER: CCG-08-473346: LESLIE HUMPHREY VS. COLORADO BANKERS LIFE INS.

NOTICE TO PLAINTIFF

A Case Management Conference is set for

DATE: AUG-15-2008

TIME: 9:00AM

PLACE: Department 212
400 McAllister Street
San Francisco, CA 94102-3680

All parties must appear and comply with Local Rule 3.

CRC 3.725 requires the filing and service of a case management statement form CM-110 no later than 15 days before the case management conference.

However, it would facilitate the issuance of a case management order without an appearance at the case management conference if the case management statement is filed, served and lodged in Department 212 twenty-five (25) days before the case management

Plaintiff must serve a copy of this notice upon each party to this action with the summons and complaint. Proof of service subsequently filed with this court shall so state.

ALTERNATIVE DISPUTE RESOLUTION POLICY REQUIREMENTS

IT IS THE POLICY OF THE SUPERIOR COURT THAT EVERY CIVIL CASE PARTICIPATE IN EITHER MEDIATION, JUDICIAL OR NON-JUDICIAL ARBITRATION, THE EARLY SETTLEMENT PROGRAM OR SOME SUITABLE FORM OF ALTERNATIVE DISPUTE RESOLUTION PRIOR TO A MANDATORY SETTLEMENT CONFERENCE OR TRIAL (SEE LOCAL RULE 4)

Plaintiff must serve a copy of the Alternative Dispute Resolution Information Package on each defendant along with the complaint. All counsel must discuss ADR with clients and opposing counsel and provide clients with a copy of the Alternative Dispute Resolution Information Package prior to filing the Case Management Statement.

[DEFENDANTS: Attending the Case Management Conference does not take the place of filing a written response to the complaint. You must file a written response with the court within the time limit required by law. See Summons.]

Superior Court Alternative Dispute Resolution Coordinator
400 McAllister Street, Room 103
San Francisco, CA 94102
(415) 551-3876

See Local Rules 3.6, 6.0 C and 10.0 re stipulation to commissioners acting as temporary judges

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P. 023/031

ATTORNEY OR PARTY WITHOUT ATTORNEY (Print Name, Case Number, and Address): TELEPHONE NO.: FAX NO.: (optional) E-MAIL ADDRESS (optional): ATTORNEY FOR (please):		FOR COURT USE ONLY CM-110
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
PLAINTIFF/RESPONDENT: DEFENDANT/RESPONDENT:		
CASE MANAGEMENT STATEMENT (Check one): <input type="checkbox"/> UNLIMITED CASE (Amount demanded exceeds \$25,000) <input type="checkbox"/> LIMITED CASE (Amount demanded is \$25,000 or less)		CASE NUMBER:
A CASE MANAGEMENT CONFERENCE is scheduled as follows: Date: _____ Time: _____ Day: _____ Day: _____ Address of court (if different from the address above): _____		

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

- Party or parties (answer one):
 - ☐ This statement is submitted by party (name):
 - ☐ This statement is submitted jointly by parties (names):
- Complaint and cross-complaint (to be answered by plaintiffs and cross-complainants only)
 - The complaint was filed on (date):
 - ☐ The cross-complaint, if any, was filed on (date):
- Service (to be answered by plaintiffs and cross-complainants only)
 - ☐ All parties named in the complaint and cross-complaint have been served, or have appeared, or have been dismissed.
 - ☐ The following parties named in the complaint or cross-complaint:
 - ☐ have not been served (specify names and explain why not):
 - ☐ have been served but have not appeared and have not been dismissed (specify names):
 - ☐ have had a default entered against them (specify names):
 - ☐ The following additional parties may be added (specify names, nature of involvement in case, and the date by which they may be served):
- Description of case
 - Type of case in ☐ complaint ☐ cross-complaint (describe, including causes of action):

Form Adopted for Mandatory Use
Superior Court of California
CM-110 (Rev. January 1, 2007)

CASE MANAGEMENT STATEMENT

Page 1 of 1

Call Rules of Court,
rules 3.720-3.730
www.courtinfo.ca.govAmerican Judicial, Inc.
www.FederalMatters.com

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PAGE 23
P. 024/031

PLAINT/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

10. d. The party or parties are willing to participate in (check all that apply):

- (1) ☐ Mediation
 (2) ☐ Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to close 15 days before arbitration under Cal. Rules of Court, rule 3.822)
 (3) ☐ Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to remain open until 30 days before trial, order required under Cal. Rules of Court, rule 3.822)
 (4) ☐ Binding judicial arbitration
 (5) ☐ Binding private arbitration
 (6) ☐ Neutral case evaluation
 (7) ☐ Other (specify):

- e. ☐ This matter is subject to mandatory judicial arbitration because the amount in controversy does not exceed the statutory limit.
 f. ☐ Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.
 g. ☐ This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court (specify exemption):

11. Settlement conference:

- ☐ The party or parties are willing to participate in an early settlement conference (specify when):

12. Insurance:

- a. ☐ Insurance carrier, if any, for party filing this statement (name):
 b. Reservation of rights: ☐ Yes ☐ No
 c. ☐ Coverage issues will significantly affect resolution of this case (explain):

13. Jurisdiction:

Indicate any matters that may affect the court's jurisdiction to processing of this case, and describe the status.

- ☐ Bankruptcy ☐ Other (specify):

Status:

14. Related cases, consolidation, and coordination:

- a. ☐ There are companion, underlying, or related cases:

- (1) Name of case:
 (2) Name of court:
 (3) Case number:
 (4) Status:

☐ Additional cases are specified in Attachment 14a.

- b. ☐ A motion to ☐ consolidate ☐ coordinate ☐ write filed by (name party):

15. bifurcation

- ☐ The party or parties intend to file a motion for an order bifurcating, covering, or coordinating the following issues or causes of action (specify moving party, type of motion, and reasons):

16. Other motions

- ☐ The party or parties expect to file the following motions before trial (specify moving party, type of motion, and reasons):

CM-100 (Rev. January 2008)

CASE MANAGEMENT STATEMENT

Page 2 of 6

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PAGE 24
 P. 025/031



Superior Court of California County of San Francisco

HON. DAVID BALLATI
 PRESIDING JUDGE

Judicial Mediation Program

JENNIFER B. ALCANTARA
 ADR PROGRAM ADMINISTRATOR

The Judicial Mediation program offers mediation of complex civil litigation by a San Francisco Superior Court judge familiar with the area of the law that is the subject of the controversy. Cases that will be considered for participation in the program include, but are not limited to professional malpractice, construction, employment, insurance coverage disputes, mass torts and complex commercial litigation. Judicial mediation offers civil litigants the opportunity to engage in early mediation of a case shortly after filing the complaint in an effort to resolve the matter before substantial funds are expended. This program may also be utilized at anytime throughout the litigation process. The panel of judges currently participating in the program includes:

The Honorable David J. Ballati
 The Honorable Anne Boulfane
 The Honorable Ellen Chaftin
 The Honorable Robert L. Dondero
 The Honorable Ernest H. Goldsmith
 The Honorable Harold E. Katin
 The Honorable Patrick J. Mahoney
 The Honorable Tomas Mason

The Honorable James J. McBride
 The Honorable Kevin M. McCarthy
 The Honorable John E. Munter
 The Honorable Ronald Quidachay
 The Honorable A. James Robertson, II
 The Honorable John K. Stewart
 The Honorable Mary E. Wiss

Parties interested in judicial mediation should file the Stipulation to Alternative Dispute Resolution form attached to this packet indicating a joint request for inclusion in the program and deliver a courtesy copy to Dept. 212. A preference for a specific judge may be indicated. The court Alternative Dispute Resolution Program Administrator will facilitate assignment of cases that qualify for the program.

Note: Space is limited. Submission of a stipulation to judicial mediation does not guarantee inclusion in the program. You will receive written notification from the court as to the outcome of your application.

Superior Court Alternative Dispute Resolution
 400 McAllister Street, Room 103, San Francisco, CA 94102
 (415) 551-3876

10/07 (a)

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Abstract

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ONE LEGAL

(FAX) 1-510-878-0984

P. 02/031

Introduction

Did you know that most civil lawsuits settle without a trial?

And did you know that there are a number of ways to resolve civil disputes without having to sue somebody?

These alternatives to a lawsuit are known as alternative dispute resolutions (ADR). The most common forms of ADR are mediation, arbitration and case evaluation. There are a number of other kinds of ADR as well.

In ADR, trained, impartial persons decide disputes or help parties decide disputes themselves. These persons are called neutrals. For example, in mediation, the neutral is the mediator. Neutrals normally are chosen by the disputing parties or by the court. Neutrals can help parties resolve disputes without having to go to court.

ADR is not new. ADR is available in many communities through dispute resolution programs and private neutrals.

Advantages of ADR

ADR can have a number of advantages over a lawsuit.

- **ADR can save time.** A dispute often can be resolved in a matter of months, even weeks, through ADR, while a lawsuit can take years.
- **ADR can save money.** Court costs, attorney fees, and expert fees can be saved.
- **ADR can be cooperative.** This means that the parties having a dispute may work together with the neutral to resolve the dispute and agree to a remedy that makes sense to them, rather than work against each other.
- **ADR can reduce stress.** There are fewer, if any, court appearances. And because ADR can be speedier, and save money, and because the parties are normally cooperative, ADR is easier on the nerves. The parties don't have a lawsuit hanging over their heads for years.
- **ADR encourages participation.** The parties may have more chances to tell their side of the story than in court and may have more control over the outcome.
- **ADR is flexible.** The parties can choose the ADR process that is best for them. For example, in mediation the parties may decide how to resolve their dispute.
- **ADR can be more satisfying.** For all the above reasons, many people have reported a high degree of satisfaction with ADR.

ADR-1 10/07 (34)

Page 2

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EMPLOYERS 1ST CHOICE
 (FAX) 415 10487340991

PAGE 28
 0.029/031

A mediator does not propose a judgment or provide an evaluation of the merits and value of the case. Many attorneys and litigants find that mediation's emphasis on cooperative dispute resolution produces more satisfactory and enduring resolutions. Mediation's non-adversarial approach is particularly effective in disputes in which the parties have a continuing relationship, where there are multiple parties, where equitable relief is sought, or where strong personal feelings exist.

Operation

San Francisco Superior Court Local Court Rule # provides three different voluntary mediation programs for civil disputes. An appropriate program is available for all civil cases, regardless of the type of action or type of relief sought.

To help litigants and attorneys identify qualified mediators, the Superior Court maintains a list of mediation providers whose training and experience have been reviewed and approved by the Court. The list of court approved mediation providers can be found at www.sfgov.org/courts. Litigants are not limited to mediators on the court list and may select any mediator agreed upon by all parties. A mediation provider need not be an attorney.

Local Rule 4.2 D allows for mediation in lieu of judicial arbitration, so long as the parties file a stipulation to mediate within 240 days from the date the complaint is filed. If settlement is not reached through mediation, a case proceeds to trial as scheduled.

Private Mediation

The Private Mediation program accommodates those that wish to participate in private mediation to fulfill the court's alternative dispute resolution requirement. The parties select a mediator, panel of mediators or mediation program of their choice to conduct the mediation. The cost of mediation is borne by the parties equally unless the parties agree otherwise.

Parties in civil cases that have not been ordered to arbitration may consent to private mediation at any point before trial. Parties willing to submit a matter to private mediation should indicate this preference on the Stipulation to Alternative Dispute Resolution form or the Case Management Statement (CM-110). Both forms are attached to this packet.

ADR-x 70/07 (S)

Page 6

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ONE LEGAL

(PRX) 1-510-873-0980

P.030/031

Cost

Generally, the cost of Private Mediation ranges from \$200 per hour to \$400 per hour and is shared equally by the parties. Many mediators are willing to adjust their fees depending upon the income and resources of the parties. Any party who meets certain eligibility requirements may ask the court to appoint a mediator to serve at no cost to the parties.

The Mediation Services of the Bar Association of San Francisco provides three hours of mediation time at no cost with a \$200 per party administrative fee.

There is no charge for participation in the Judicial Mediation program.

EARLY SETTLEMENT PROGRAM**Description**

The Bar Association of San Francisco, in cooperation with the Court, offers an Early Settlement Program ("ESP") as part of the Court's settlement conference calendar. The goal of early settlement is to provide participants an opportunity to reach a mutually acceptable settlement that resolves all or part of the dispute. The two-member volunteer attorney panel reflects a balance between plaintiff and defense attorneys with at least 10 years of trial experience.

As in mediation, there is no set format for the settlement conference. A conference typically begins with a brief meeting with all parties and counsel, in which each is given an opportunity to make an initial statement. The panelists then assist the parties in understanding and candidly discussing the strengths and weaknesses of the case. The Early Settlement Conference is considered a "quasi-judicial" proceeding and, therefore, is not entitled to the statutory confidentiality protections afforded to mediation.

Operation

Civil cases enter the ESP either voluntarily or through assignment by the Court. Parties who wish to choose the early settlement process should indicate this preference on the status and setting conference statement.

ADR-1 10/07 (a)

Page 6

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NAME OF PARTY DISSENTING _____ NAME OF PARTY OR GROUPING ENDORSING DISSENT _____ SIGNATURE OF PARTY ENDORSING _____
☐ PUBLIC ☐ CONFIDENTIAL ☐ COMPOUND/CONFIDENTIAL _____ DATE _____

NAME OF PARTY DISSENTING _____ NAME OF PARTY OR GROUPING ENDORSING DISSENT _____ SIGNATURE OF PARTY ENDORSING _____
☐ PUBLIC ☐ CONFIDENTIAL ☐ COMPOUND/CONFIDENTIAL _____ DATE _____

NAME OF PARTY DISSENTING _____ NAME OF PARTY OR GROUPING ENDORSING DISSENT _____ SIGNATURE OF PARTY ENDORSING _____
☐ PUBLIC ☐ CONFIDENTIAL ☐ COMPOUND/CONFIDENTIAL _____ DATE _____

☐ ADDITIONAL SIGNATURE(S) IF APPLICABLE _____

DATE 2011 _____ STATEMENT TO ALTERNATIVE DISPUTE RESOLUTION _____

89-58069-421206 E136 P31

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RPR-21-2008(NON) 16:07 ONE LEGAL

EMPLOYERS 1ST CHOICE
EPFO1-510-873-0981

PAGE 01
P. 029/031

A mediator does not propose a judgment or provide an evaluation of the merits and value of the case. Many attorneys and litigants find that mediation's emphasis on cooperative dispute resolution produces more satisfactory and enduring resolutions. Mediation's non-adversarial approach is particularly effective in disputes in which the parties have a continuing relationship, where there are multiple parties, where equitable relief is sought, or where strong personal feelings exist.

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ADR-x 10/07 (3)

Page 6

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San Francisco Superior Courts
Information Technology Group

Document Scanning Lead Sheet

Apr-28-2008 8:47 am

Case Number: CGC-08-473346

Filing Date: Apr-24-2008 8:46

Juke Box: 001 Image: 02103584

SUMMONS ON COMPLAINT FILED BY PLAINTIFF

LESLIE HUMPHREY VS. COLORADO BANKERS LIFE INSURANCE COMPANY et al

001C02103584

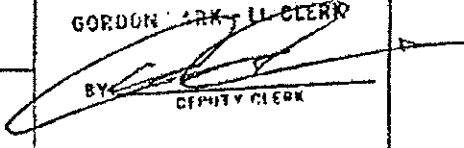
Instructions:

Please place this sheet on top of the document to be scanned.

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(F) 1+510+873+0984

P. 002/006

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar Number, and Address) Wesley Lowe, 111761 MANNION & LOWE 655 Montgomery Street Suite 1200 San Francisco, CA 94111 TELEPHONE NO.: (415) 733-1050 ATTORNEY FOR (Name) Plaintiff		FILED SAN FRANCISCO COUNTY SUPERIOR COURT 2008 APR 24 PM 4:08 GORDON MARK II CLERK BY  CLERK
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Superior Court of San Francisco County 400 McAllister Street, Civil San Francisco, CA 94102-0000		
PLAINTIFF/PETITIONER: Humphrey DEFENDANT/RESPONDENT: Colorado Bankers Life Insurance Company, et al		CASE NUMBER CGC-08-473346
PROOF OF SERVICE OF SUMMONS		Ref No. of Filing H062

- At the time of service I was a citizen of the United States, at least 18 years of age and not a party to this action.
- I served copies of: Summons, Complaint, Errata-Exhibit 1 to Complaint, Notice to Plaintiff, ADR Information Package, Stipulation to ADR, Case Management Statement, Judicial Mediation Program

3. a. Party served: Colorado Bankers Life Insurance Company

b. Person Served: Daren B. Everett - Person authorized to accept service of process

4. Address where the party was served: 8421 Auburn Blvd. Suite 300
Citrus Heights, CA 95610

5. I served the party

a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) or (date): 4/22/2008 (2) at (time): 3:18 PM

6. The "Notice to the Person Served" (on the summons) was completed as follows:

c. on behalf of.

Colorado Bankers Life Insurance Company

under, CCP 416.10 (corporation)

7. Person who served papers

a. Name: Tyler Dimaria
b. Address: One Legal - 194-Marin
501 Redwood Blvd #223
Novato, CA 94947

c. Telephone number: 415-491-0606

d. The fee for service was: \$ 75.00

e. I am:

- (3) registered California process server.
 (i) Employee or independent contractor,
 (ii) Registration No. 2006-06
 (iii) County SACRAMENTO

8. I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Date: 4/24/2008

Tyler Dimaria

NAME OF PERSON WHO SERVED PAPERS
 Form Adopted for Mandatory Use
 Judicial Council of California POS-018
 (Rev. Jan 1, 2007)

BY FAX



SIGNATURE

PROOF OF SERVICE OF SUMMONS

FF# 6661134

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1 LINDA M. LAWSON (Bar No. 77130)
2 KHRYS WU (Bar No. 219041)
3 MESERVE, MUMPER & HUGHES LLP
4 300 South Grand Avenue, 24th Floor
5 Los Angeles, California 90071-3185
6 Telephone: (213) 620-0300
7 Facsimile: (213) 625-1930
8 Attorneys for Defendant
9 COLORADO BANKERS LIFE INSURANCE
10 COMPANY

ENDORSED
FILED
San Francisco County Superior Court

MAY 16 2008

GORDON PARK-LI, Clerk

BY: _____ Deputy Clerk

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF SAN FRANCISCO

13 LESLIE HUMPHREY,
14 Plaintiff,
15 vs.
16 COLORADO BANKERS LIFE
17 INSURANCE COMPANY, and DOES 1
18 through 50, inclusive,
19 Defendant.

Case No. CGC-08-473346
ANSWER TO COMPLAINT
Complaint Filed: March 14, 2008
Department: 212

FAXED

20 Defendant COLORADO BANKERS LIFE INSURANCE COMPANY ("CBL")
21 hereby answers plaintiff LESLIE HUMPHREY's ("Plaintiff") Complaint as follows:

22 1. Under and pursuant to California Code of Civil Procedure section 431.30(d),
23 CBL denies, generally and specifically, each and every allegation contained in Plaintiff's
24 unverified Complaint and each allegation of every cause of action set forth therein, and the
25 whole thereof, and denies that Plaintiff sustained damages in the sum or sums alleged, or
26 in any other sum or sums, or at all. CBL further denies that Plaintiff has been damaged in
27 the sum or sums of money alleged in his Complaint, or at all, by reason of any conduct on
28 the part of CBL or any of its agents, representatives and/or employees.

LAW OFFICES
OF
MESERVE, MUMPER &
HUGHES LLP

923991

1
ANSWER TO COMPLAINT

1 **AFFIRMATIVE DEFENSES**

2 **FIRST AFFIRMATIVE DEFENSE**

3 2. CBL alleges that the Complaint, and each purported cause of action alleged
4 therein, fails to state facts sufficient to constitute a cause of action against CBL.

5
6 **SECOND AFFIRMATIVE DEFENSE**

7 3. CBL alleges that any and all of the actions taken by any officer, employee,
8 and/or agent of CBL were good faith assertions of the rights of CBL and were therefore
9 privileged and/or justified.

10
11 **THIRD AFFIRMATIVE DEFENSE**

12 4. CBL alleges that if Plaintiff has sustained any damages as alleged in the
13 Complaint, which CBL denies, he failed to mitigate his damages.

14
15 **FOURTH AFFIRMATIVE DEFENSE**

16 5. CBL alleges that Plaintiff has waived any and all claims that he may have or
17 have had to the relief, if any, referred to in the Complaint.

18
19 **FIFTH AFFIRMATIVE DEFENSE**

20 6. CBL alleges that Plaintiff is estopped from alleging that CBL caused or
21 contributed to the damages, if any, referred to in the Complaint.

22
23 **SIXTH AFFIRMATIVE DEFENSE**

24 7. CBL is informed and believes, and on that basis alleges that its purported
25 obligations, if any, as alleged in the Complaint were fully performed.

1 **SEVENTH AFFIRMATIVE DEFENSE**

2 8. CBL is informed and believes, and on that basis alleges that if CBL failed to
3 perform any obligations owed to Plaintiff, which CBL categorically denies, such
4 performance was prevented or made impossible as a result of acts or omissions of Plaintiff
5 and/or other third parties.

6
7 **EIGHTH AFFIRMATIVE DEFENSE**

8 9. CBL alleges that, without conceding that Plaintiff sustained any damages as
9 alleged in the Complaint, if any such damages were sustained by Plaintiff, Plaintiff failed
10 to and did not exercise ordinary care, caution or prudence on his own behalf and that the
11 alleged damages, if any, either sustained by Plaintiff or referred to in the Complaint were
12 directly and proximately caused and contributed to by the acts and/or omissions of
13 Plaintiff. Accordingly, recovery, if any, on the part of the Plaintiff against CBL must be
14 reduced by a proportionate percentage of the wrong attributable to Plaintiff.

15
16 **NINTH AFFIRMATIVE DEFENSE**

17 10. CBL alleges that, without conceding Plaintiff has sustained any damages as
18 alleged in his Complaint, if any such damages were sustained by Plaintiff, they were
19 caused and/or contributed to by the actions and/or negligence of Plaintiff and/or his agents
20 or representatives and/or by persons or entities other than CBL, who at all times were
21 acting without the consent, authorization, knowledge or ratification of CBL, with regard to
22 any and all of the acts alleged in the Complaint, and the award of damages, if any, should
23 be reduced by the proportionate percentage of the wrong attributable to those persons or
24 entities and/or Plaintiff and/or his agents or representatives.

25
26 **TENTH AFFIRMATIVE DEFENSE**

27 11. CBL alleges that Plaintiff failed to comply with one or more of the
28 conditions precedent to obtaining coverage under the policy at issue in the Complaint.

ELEVENTH AFFIRMATIVE DEFENSE

12. CBL alleges that Plaintiff does not have a Covered Condition under the terms and conditions of the policy at issue in the Complaint and, therefore, he is ineligible for the claimed benefits thereunder.

TWELFTH AFFIRMATIVE DEFENSE

13. CBL alleges that Plaintiff's Complaint, and each purported cause of action contained therein, is barred, in whole or in part, by the applicable statute of limitations including, but not limited to, California Code of Civil Procedure Sections 335.1, 337, 338, 339, 340 and 343 and California Business and Professions Code Section 17208.

THIRTEENTH AFFIRMATIVE DEFENSE

14. CBL alleges that Plaintiff has not supplied CBL with sufficient facts, proof or documentation that would support the payment to Plaintiff of any benefits under the policy at issue in the Complaint.

FOURTEENTH AFFIRMATIVE DEFENSE

15. CBL alleges that any and all actions taken by CBL were fair and reasonable and were performed in good faith based on all the relevant facts known to CBL at all applicable times.

FIFTEENTH AFFIRMATIVE DEFENSE

16. CBL alleges that the Complaint, and each purported cause of action contained therein, fails to state any facts that would entitle Plaintiff to recover general, compensatory, emotional distress, punitive and/or other damages (including attorney's fees and costs) against CBL.

1 SIXTEENTH AFFIRMATIVE DEFENSE

2 17. CBL alleges that Plaintiff's breach of the covenant of good faith and fair
3 dealing claim ("bad faith") fails because a genuine issue of liability exists.

4
5 SEVENTEENTH AFFIRMATIVE DEFENSE

6 18. CBL alleges that it breached no duty owed to Plaintiff, if any such duty was
7 owed.

8
9 EIGHTEENTH AFFIRMATIVE DEFENSE

10 19. CBL alleges that no representations, other than possibly those expressly set
11 forth in the policy at issue in the Complaint, were made to Plaintiff by CBL or any of its
12 authorized agents, representatives or employees. CBL further alleges that, without
13 conceding that CBL made any representations to Plaintiff, other than possibly those
14 expressly set forth in the policy at issue in the Complaint, if any such representations were
15 made by CBL or any of its authorized agents, representatives or employees to Plaintiff,
16 Plaintiff did not justifiably or reasonably rely on such representations.

17
18 NINETEENTH AFFIRMATIVE DEFENSE

19 20. CBL alleges that each and every statement made by CBL or any of its
20 authorized agents, representatives or employees to Plaintiff, if any, was an expression of
21 opinion and not of existing fact, and therefore Plaintiff's cause of action for fraud is
22 improper.

23
24 TWENTIETH AFFIRMATIVE DEFENSE

25 21. CBL alleges that the provisions of California Civil Code Section 1624 bar
26 any and all allegations concerning any oral representations and/or statements that are not
27 expressly contained within the applicable writings, if any, in this action.

1 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

2 22. Without conceding that Plaintiff has suffered any damages as alleged in the
3 Complaint, CBL alleges that if any such damages were sustained by Plaintiff, those
4 damages should be properly apportioned among all persons or entities who contributed to
5 those damages in proportion to the fault of those persons or entities, pursuant to California
6 Civil Code Section 1431.2 and any relevant provisions of California common and statutory
7 law.

8
9 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

10 23. CBL alleges that the bases by which punitive damages are imposed pursuant
11 to California statutory and common law, are fatally constitutionally infirm, and that giving
12 effect to such laws is violative of the First, Fourth, Fifth, Sixth, Eighth (except the
13 excessive fines clause) and the Fourteenth Amendments to the United States Constitution
14 and the equivalent provisions in the California Constitution.

15
16 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

17 24. CBL alleges that the California practice of allowing the wealth of an
18 insurance company defendant to be the primary measure for the imposition of a punitive
19 and exemplary damage awards constitutes an impermissible punishment of CBL's status in
20 violation of its rights to due process and equal protection of the laws under the Fifth and
21 Fourteenth Amendments to the United States Constitution and by Article I, Section 7 of
22 the California Constitution.

23
24 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

25 25. CBL alleges that granting Plaintiff's prayer for punitive damages against it
26 would violate certain provisions of the Constitution of the United States including but not
27 limited to, the following: The Fifth and Fourteenth Amendments guarantee CBL due
28 process of the law and are violated by the operation of such vague, imprecise and

1 impermissible laws regarding both the awarding and the amount of punitive damages as
2 are the laws on which the subject punitive damage claim is based; an award of punitive
3 damages against CBL under the facts of this case would violate due process as being
4 grossly excessive in relation to the legitimate interests of the State of California; the
5 Fourteenth Amendment guarantees CBL equal protection of the laws and is violated by the
6 imposition of punitive damages in that such sanction is discriminatory and arbitrary in
7 penalizing CBL on the basis of wealth; the Fourth, Fifth and Sixth Amendments form the
8 basis for laws governing the processing, convicting and sentencing of criminal defendants
9 and to the extent that the Complaint is subjected to criminal sanction for punitive damages,
10 the burden of proof required to impose the same should be proof beyond a reasonable
11 doubt and punitive damages should not be awarded without affording CBL full range of
12 criminal safeguards afforded by the Constitution and the imposition of punitive damages
13 would violate Article I Section XX of said constitution. CBL further alleges that in
14 addition to the above, the imposition of punitive damages against CBL would violate
15 similar and related provisions of the Constitution of the State of California.

16
17 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

18 26. CBL alleges that the imposition of punitive damages against it would violate
19 California Civil Code Section 3294.

20
21 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

22 27. CBL alleges that any and all of the actions taken by it, or any of its officers,
23 employees, and/or agents, were fair and reasonable and were performed in good faith
24 based on all relevant facts known to CBL at the time. Therefore, CBL alleges that its
25 actions were privileged and Plaintiff is not entitled to a recovery of punitive or exemplary
26 damages against CBL.

1 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

2 28. CBL alleges that no acts or omissions by CBL constitute the proximate or
3 legal cause of any of Plaintiff's alleged damages. Therefore, Plaintiff has no valid claim
4 against CBL.

5
6 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

7 29. CBL alleges that each and every act and/or statement, if any, of CBL and/or
8 its agents, representatives, or employees with reference to the matters at issue were made
9 pursuant to and consistent with applicable law.

10
11 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

12 30. CBL presently has insufficient knowledge or information on which to form a
13 belief whether it may have additional, yet unstated affirmative defenses. CBL reserves the
14 right to assert additional affirmative defenses in the event discovery or further
15 investigation indicates that asserting additional affirmative defenses would be warranted.

16
17 **PRAYER**

18 WHEREFORE, CBL prays for judgment in its favor and against Plaintiff as
19 follows:

- 20 1. An order dismissing the Complaint, with prejudice, as to all defendants and
21 with respect to all claims for relief;
- 22 2. An order declaring that Plaintiff should take nothing by his Complaint;
- 23 3. An order declaring that no benefits or damages are payable to Plaintiff under
24 the policy at issue in this matter;
- 25 4. For judgment against Plaintiff and in favor of CBL;
- 26 5. That CBL recover its costs of suit incurred herein, including reasonable
27 attorneys' fees; and
- 28 6. For such other and further relief as this Court deems just and proper.

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Dated: May 16, 2008

MESERVE, MUMPER & HUGHES LLP
LINDA M. LAWSON
KHRYN WU

By: 

Khrys Wu
Attorneys for Defendant
COLORADO BANKERS LIFE
INSURANCE COMPANY

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 300 South Grand Avenue, 24th Floor, Los Angeles, California 90071-3185.

On May 16, 2008, I served on interested parties in said action the within:

ANSWER TO COMPLAINT

by placing a true copy thereof in sealed envelope(s) addressed , as stated below:

E. Gerard Mannion, Esq.
Wesley M. Lowe, Esq.
Mannion & Lowe
655 Montgomery Street, Suite 1200
San Francisco, CA 94111

I am readily familiar with this firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

Executed on May 16, 2008, at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

ANITA DE LEON

(Type or print name)

Anita De Leon

(Signature)

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 300 South Grand Avenue, 24th Floor, Los Angeles, California 90071-3185.

On May 21, 2008, I served on interested parties in said action the within:

NOTICE OF REMOVAL OF ACTION TO UNITED
STATES DISTRICT COURT

by placing a true copy thereof in sealed envelope(s) addressed, as stated below and causing such envelope(s) to be deposited in the U.S. Mail at Los Angeles, California.

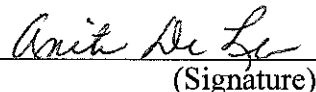
E. Gerard Mannion, Esq.
Wesley M. Lowe, Esq.
Mannion & Lowe
655 Montgomery Street, Suite 1200
San Francisco, CA 94111

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Executed on May 21, 2008, at Los Angeles, California.

I declare under penalty of perjury that I am employed in the office of a member of the bar of this Court at whose direction the service was made and that the foregoing is true and correct.

ANITA DE LEON
(Type or print name)


(Signature)